

**MINUTES**  
**REGULAR MEETING OF BOARD OF LAND COMMISSIONERS**  
**February 19, 2008, at 9:00 a.m.**  
**Room 303 State Capitol Building**  
**Helena, Montana**

PRESENT: Governor Brian Schweitzer, Attorney General Mike McGrath, Superintendent of Public Instruction Linda McCulloch, Secretary of State Brad Johnson, and State Auditor John Morrison

Mr. Johnson moved for approval of the minutes from the January 22, 2008, meeting of the Board of Land Commissioners. Seconded by Mr. Morrison. Motion carried unanimously.

**BUSINESS CONSIDERED:**

208-1            DLI: APPROVAL FOR SALE OF LOT

Ms. Sexton stated that the paved asphalt lot is 7000 square feet in Billings. It is owned by the Department of Labor and Industry and is no longer needed for office parking. The lot was appraised, a checklist was completed, and the proposal went through the public comment period: there were no comments. DLI requested approval for the sale at public auction at the recommended minimum bid of \$32,000. If the lot sells for at least the minimum bid amount, DLI will request approval to consummate the sale 30 to 60 days within the date of the auction.

Motion was made by Mr. Morrison for approval of the sale of the lot owned by DLI. Seconded by Ms. McCulloch. Motion carried unanimously.

208-2            APPROVAL FOR COMMUNITIZATION AGREEMENT – HEADINGTON OIL

Ms. Sexton stated that this is a request for a communitization agreement in Richland County. The tracts are in the Bakken Formation within the Yellowstone River riverbed. The two tracts compromise 23.91 percent of the communitized area.

Motion was made by Mr. McGrath for approval of the communitization agreement. Seconded by Mr. Johnson. Motion carried unanimously.

208-3            METALLIFEROUS LEASE APPLICATION APPROVAL

Ms. Sexton stated the lease application is in Lincoln County for placer mining (not load) of gold. The rental for the first year is \$3.00 per acre and \$1.00 per acre for the second and third years. The royalty rate is five percent and there is a \$500 annual advanced royalty and a \$2500 bond. DNRC owns both the surface and mineral rights. There are stipulations attached to the lease as well. If there is development, Mr. McCallum will have to submit a plan of operations for DNRC's approval prior to exploration or mining activity.

Motion was made by Ms. McCulloch to approve the metalliferous lease application. Seconded by Mr. McGrath.

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Governor Schweitzer said that he understood that the Land Board was not necessarily approving the process of placer mining and asked Monte Mason to explain what the process of placer mining entailed.

Monte Mason, DNRC Minerals Management Bureau Chief, said that placer mining is an attempt to get precious metals out of ground that has worked its way through riverbeds. As the ground moves, gold that was in place goes with the gravel and sands and ends up in the creek and riverbeds. A person goes into an area like this and brings up the gravel, sluices it through various sized screens to bring out the larger pebbles and gravel, and finally gets down to concentrate which hopefully has gold flecks/pieces in it. The person then works the gold out with a pan because gold is heavier than silt.

Governor Schweitzer asked if it was necessary that it was an active streambed?

Mr. Mason said that it is not necessary. This particular lease application is for a dry gravel drainage.

Mr. McGrath asked if the applicant would come back for approval of an operating plan if approval for the exploration project is granted and the applicant decides to go forward with operations?

Mr. Mason said that is correct. Any activity at all requires the applicant to come back to the DNRC and submit an operating plan that would include reclamation specifics. DNRC always requires a bond. The very smallest plans can fall under a Small Miners Exclusion at DEQ which means the applicant does not have to file bonding with DEQ—those are very small operations. If the operations trigger above a certain point then they are under the regulatory control of full bonding under both DEQ and DNRC.

Mr. Morrison asked if the lease application did anything more than lock up the rights for the applicant, and if the applicant is in the position to do any preliminary prospecting without further approval from the DNRC?

Mr. Mason said the applicant may be in a position later this year to attempt some mining, but this lease does not grant the authority to do anything without coming back to the DNRC for environmental review. This lease also allows the DNRC to look at what the applicant is proposing and deny the proposal if it is not in the best interest of the trust.

Mr. Morrison asked if approval today just secures the applicant's right to come forward with a proposal?

Mr. Mason said that is correct.

Motion to approve the metalliferous lease application carried unanimously.

208-4      PRELIMINARY APPROVAL FOR SALE OF LAND BANKING PARCELS

Ms. Sexton stated that this is for preliminary approval of three land banking parcels in Lewis and Clark County within the Dearborn Ranch, which is approximately 3 to 11 miles north of Wolf Creek. The leases are currently grazing leases. Two of the parcels are surrounded on four sides by the Dearborn Ranch. The other parcel has one side that is bordered by the Canyon

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Cattle Company. No access is provided for recreational purposes. If the Land Board grants preliminary approval, then the DNRC would go through the appraisal process and archaeological and paleontological assessments.

Larry Copenhaver, Montana Wildlife Federation, stated that the process with land banking sales and purchases can be daunting because you have to be careful not to miss some very interesting pieces of ground. This particular sale has three parcels, but only Parcel No. 170 caught the attention of the MWF. On the map, the parcel goes corner-to-corner with a piece of private land that does not touch the Dearborn Ranch. That parcel is under Block Management and managed by Mamie Fiers of the Cozy Valley Ranch which is between Craig and Wolf Creek. Hunters often stand on the corner and look into that state land that is totally enclosed by the Dearborn Ranch and see elk—sometimes up to 300 or 400 head. The distance from the western boundary from the highway to the state land is not that great.

MWF maintains that this land is too valuable to lose out of the public estate. Currently there is discussion of allowing crossing from corners from public land to public land although it is currently not allowed under Block Management. Possible alternate options suggested by Mr. Copenhaver included:

- ♦ Exchanging Parcel No. 210 for the acreage that borders the western edge of Parcel No. 170 in order to have access from the highway.
- ♦ Using money from FWP's Public Access Enhancement Program to lease and/or purchase rights-of-way to public land through private property.

Mr. Copenhaver did not know whether or not the DNRC had pursued options other than land banking. MWF does not necessarily support the sale of Parcel No. 170 until other options are looked at, but has no objections to the other two sales. As with anything within the public land arena, lands with access become more valuable. MWF believes that is the principle behind the land banking process—trading up parcels with no access to purchase parcels that do have access in order to increase the value to the trust.

Motion was made by Mr. McGrath for preliminary approval of land banking parcels 170, 210, and 211. Seconded by Mr. Johnson.

Mr. McGrath stated that he thought the Montana Wildlife Federation had sent a letter saying that the parcels were acceptable.

Mr. Copenhaver said that he did not know of a letter sent for these particular parcels, but that a letter was sent questioning three different parcels. Possibly parcel numbers 170, 210, and 211 were signed off on, but MWF has since taken another look at the parcels. MWF had not previously noticed that Parcel No. 170 was included in the proposed parcels.

Governor Schweitzer asked if the DNRC had received a support letter from the MWF? He stated that he believed there are actually other sections that are surrounded by private land that are adjacent to a conservation easement.

Ms. Sexton stated that the DNRC did receive communication from the Wildlife Federation that there were three other parcels that did border on a ranch which borders on a conservation easement. According to DNRC land banking rules, that is one of the criteria that is looked at. As a result, DNRC withdrew those three nominations. The DNRC understood from MWF's letter

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that parcels 170, 210, and 211 were acceptable. The parcels recommended by the MWF for sale are those listed today.

Mr. McGrath asked that the Land Board give preliminary approval as proposed and then look at further exploration of the parcels. His impression was that the parcels had been looked over and given support by the MWF. He advised that the Land Board look at the map to see if what Mr. Copenhagen said was true and to move forward accordingly.

Mr. Morrison asked Mr. Copenhagen if the only objection MWF had was with southernmost parcel, No. 170?

Mr. Copenhagen said that was true and apologized on behalf of the MWF for missing Parcel No. 170 when they sent in their approval letter.

Mr. Morrison asked who owned the property to the south of the Dearborn Ranch that is immediately southeast of the parcel in question?

Mr. Copenhagen stated that originally the parcel was owned by Albert and Mamie Fiers. He was uncertain if Ms. Fiers actually still owned the property or just managed it for someone else.

Mr. Morrison asked if there is currently public access to that section?

Mr. Copenhagen said yes, through Block Management.

Ms. Sexton noted that Parcel No. 170 is a correction section, which is why it is not of standard size.

Governor Schweitzer asked if a large part of the Dearborn Ranch is under Block Management?

Mr. Copenhagen stated that the Dearborn Ranch has two small parcels that are under Block Management. The Block Management section managed by Ms. Fiers is outside the Dearborn Ranch.

Governor Schweitzer asked if the access from that Block Management section into the state section required more than stepping across the corner?

Mr. Copenhagen stated that it is just a corner-to-corner abutment. Many people have gone on the Block Management land—and seeing the high concentration of wildlife in the state section—wished they could cross the corner.

Governor Schweitzer asked if the land did in fact have an easement?

Mr. Copenhagen stated that the land currently did not. If the 2007 Legislature clarified whether or not people could access public land through corner-to-corner crossing, then there would be access.

Governor Schweitzer stated voting for preliminary approval would move the land banking process forward. After preliminary approval there would be the opportunity for further input and discussion with the land owner.

Motion for preliminary approval of land banking parcels 170, 210, and 211 carried unanimously.

208-5            MIDDLE SARPY CREEK TIMBER SALE, LIMITED ACCESS

Ms. Sexton stated that the Middle Sarpy Creek timber sale in Bighorn County is for limited access through a private landowner. The sale is for 82 acres for a total of 138,000 board feet. It is all tractor logging and there will be a temporary road constructed to access the harvest units. Both timber and pulp will be harvested, with the pulp sold at a minimum of \$1.00 per ton. A grazing lease is currently held by the same private owner that the access is required through.

Motion was made by Ms. McCulloch to approve the limited access timber sale. Seconded by Mr. McGrath.

Mr. Morrison stated that at \$11.10 per ton is a basement level price for timber. He asked if forest health was the reason for the sale?

Roger Ziesak, DNRC Forest Management Bureau, stated that this sale was proposed to the DNRC by an individual who is currently logging the surrounding ranch and had acquired access. The \$11.10 price was a negotiated price and DNRC believes it is a good price due to the isolation of that particular tract. The tract is halfway between Hardin and Colstrip and is difficult to access. There was very little chance the DNRC would ever have been able to gain access for a timber sale without this proposal. Half of the section has already been mined by the Westmoreland Coal Company. Westmoreland has the mineral rights for that tract and have expressed their approval for the project. DNRC feels that it is a good opportunity to take advantage of.

Motion carried unanimously.

208-6            STEELE DOG TIMBER SALE

Ms. Sexton stated the timber sale is west of Whitefish in Flathead County. The sale is 208 acres in a wildland-urban interface that borders I-93. There will be commercial thinning on 36 acres. The harvest prescriptions are for trees infected by bark beetles and root rot. The larger trees would be retained to promote the establishment of species in the understory. Western larch, western white pine, and ponderosa pine will be planted on 64 acres. There is no old growth. The project was analyzed as part of the Duck-to-Dog environmental assessment. As the result of public comment, the specific weed requirements of this project involve having all of the equipment washed and inspected and the project area will be monitored.

Motion was made by Mr. Johnson to approve the timber sale. Seconded by Mr. McGrath.  
Motion carried unanimously.

208-7            RATIFICATION OF THE AVISTA HYDROPOWER SITE LEASE

Ms. Sexton stated this item is for ratification of the hydropower lease with Avista Corporation which was signed at the end of January 2008. On February 1, 2008, DNRC received the rent for 2007 in the amount of \$4 million.

Motion was made by Mr. McGrath to ratify the Avista hydropower site lease. Seconded by Mr. Morrison.

Mr. McGrath stated that this lease is in accordance with the settlement that DNRC reached with Avista in the dams litigation case. He noted that the lease is for rental of the entire riverbed and the riverbed under the reservoirs involved. The lease is not related to water rights and irrigation and will not have any impact on property or water diversions by irrigators. Mr. McGrath stated that the hydropower lease is a good deal for the people of Montana and the school trust.

Governor Schweitzer thanked the Attorney General's Office for their work on the settlement with Avista.

Motion to approve the Avista hydropower lease carried unanimously.

208-8            RIGHTS-OF-WAY APPLICATIONS

Ms. Sexton singled out two of the applications for historic rights-of-way. Richard and Karen Lohman of Teton County are asking for an easement to widen the existing easement into their property from 10 feet to 30 feet. The Lohmans are involved in the Jensen historic right-of-way dispute (see *January 22, 2008, Land Board minutes*). The other application is in Powder River County from Leonard and Jennifer Bauer and is a restatement of an existing easement. The original easement was consummated when DNRC had term easements. The new easement would grant the existing easement in perpetuity. None of the other easements on the agenda are unusual.

Motion made by Mr. McGrath to approve the rights-of-way. Seconded by Mr. Morrison. Motion carried unanimously.

INFORMATIONAL ITEMS

Mr. McGrath informed the Land Board that today, the United States Supreme Court granted the state of Montana's motion to hear the case that the state filed against the state of Wyoming on interpretation of the Yellowstone River Compact. The issue in that case is whether or not Montanans are getting adequate water under the terms of the compact. Montana has one interpretation of the compact and Wyoming has a very different interpretation. The Supreme Court accepted the case and granted the state's request to hear the legal issues first. The Supreme Court will have briefing and hear arguments this year on the legal interpretation of the compact itself. The state of Montana thinks that is a good thing, and there is the potential to resolve the case. If the Supreme Court goes along with Montana's interpretation, then the case would be over and the state would not be required to go through a factual evidentiary process through a special master. Mr. McGrath reiterated that it was good that the Supreme Court accepted the case and that they agreed to hear it on a motion to dismiss basis.

Motion to adjourn was made by Mr. Johnson. Seconded by Mr. Morrison.